
December 1998

AIRPORT IMPROVEMENT PROGRAM

FAA Complying With Requirement for Local Involvement in Noise Mitigation Projects



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Resources, Community, and
Economic Development Division

B-280708

December 28, 1998

The Honorable Adam Smith
House of Representatives

Dear Mr. Smith:

Airports are responsible for controlling the impacts of aircraft noise by mitigating its effects in the immediate vicinity. Through the Airport Improvement Program (AIP), the Federal Aviation Administration (FAA) provides grants for such mitigation efforts. As a condition of receiving AIP grants, airport owners sign a series of assurances that the funds will be spent according to pertinent laws, regulations, or administrative policies. Under FAA policy, one of these grant assurances calls for an airport owner to obtain from each city, county, municipality, or other agency that has control or authority over property affected by the grant a written declaration stating that the project is reasonably consistent with local plans and has local support. Complying with this policy has been an issue at the Seattle-Tacoma International Airport, where some local groups opposed to the airport's expansion have criticized the airport's noise mitigation program and have pointed out that FAA did not require the airport to obtain written declarations that the project was consistent with local plans and had local support.

Concerned about the level of consultation that occurs between affected communities and the airport, you asked us to determine whether FAA must enforce this grant assurance as a condition of providing noise mitigation grants to the Seattle-Tacoma International Airport, which is operated by the Port of Seattle.

Results in Brief

While FAA has a policy calling for an airport owner that requests noise mitigation grants to obtain written declarations that the project is consistent with local plans and has local support from communities affected by airport noise, neither federal law nor FAA regulations require such written declarations. The federal statutes do contain a broad requirement that FAA must satisfy itself that a noise mitigation project is consistent with local plans. However, they make no mention of obtaining from cities, counties, or municipalities in which a noise mitigation project is located written declarations stating that the project is reasonably consistent with local plans and has local support. FAA officials said that in the case of Seattle-Tacoma International Airport, they met the statutory

requirements by reviewing steps the airport completed prior to applying for grants for noise mitigation projects—primarily, the development of a noise compatibility program, a process that involves public participation. FAA officials said their review of the Seattle-Tacoma International Airport's noise compatibility planning efforts satisfied them that the noise mitigation projects were consistent with local plans and had local support.

Background

Airport owners use several sources of funds to finance noise mitigation projects. Many airports rely, at least in part, on funds from the federal Airport Improvement Program (AIP). Noise mitigation grants are part of AIP's role in helping to pay for airport planning and development projects that enhance capacity, safety, and security and that mitigate noise at airports included in FAA's National Plan of Integrated Airport Systems.¹ FAA allocates most AIP funds on the basis of a legislated entitlement formula and has set-aside categories earmarked for specific types of airports or projects. The set-aside that supports noise mitigation projects is one of two established by the Congress.

As part of its statutory responsibilities, FAA established regulatory requirements in 1985 to guide airport owners in the development of "noise compatibility programs." Noise compatibility programs should identify residences and public buildings near the airport that are affected by airport noise and should propose noise reduction efforts or other steps to reduce this incompatibility.² To minimize the effects of airport noise, airport owners may acquire property, install insulation, or make other modifications in residences and public buildings, depending on the severity of the noise impact.³

Seattle-Tacoma International Airport developed its first plan to deal with noise mitigation issues in the 1970s. The plan, called the Sea-Tac Communities Plan, proposed several solutions to mitigate noise, including acquiring properties or installing noise insulation in residences and public buildings. In 1985, the airport submitted a noise compatibility program based, in part, on the airport's previous plans and specified mitigation

¹This 10-year planning document is intended to identify airports and projects critical to the national system. It includes approximately 3,300 airports. An airport must be included in the plan to be eligible for AIP funding.

²The regulatory requirements for noise compatibility plans are contained in 14 C.F.R. part 150 (known as the "Part 150 program").

³Noise mitigation grants may also be made to an agency of local government in the area around the airport if the Secretary of Transportation decides the agency is able to carry out the project. See 49 U.S.C. section 47504.

projects such as the acquisition of properties and the installation of various types of noise insulation, depending on the level of noise impact. Participation in these projects was voluntary; approximately 9,000 single-family residences and 1,374 mobile homes were eligible for either acquisition or insulation. The airport updated the noise compatibility program in 1993, providing residential noise insulation paid for entirely by the airport and adding some pilot projects for insulating multifamily residential and public buildings. The noise compatibility program is currently being updated in conjunction with the development of a new runway.

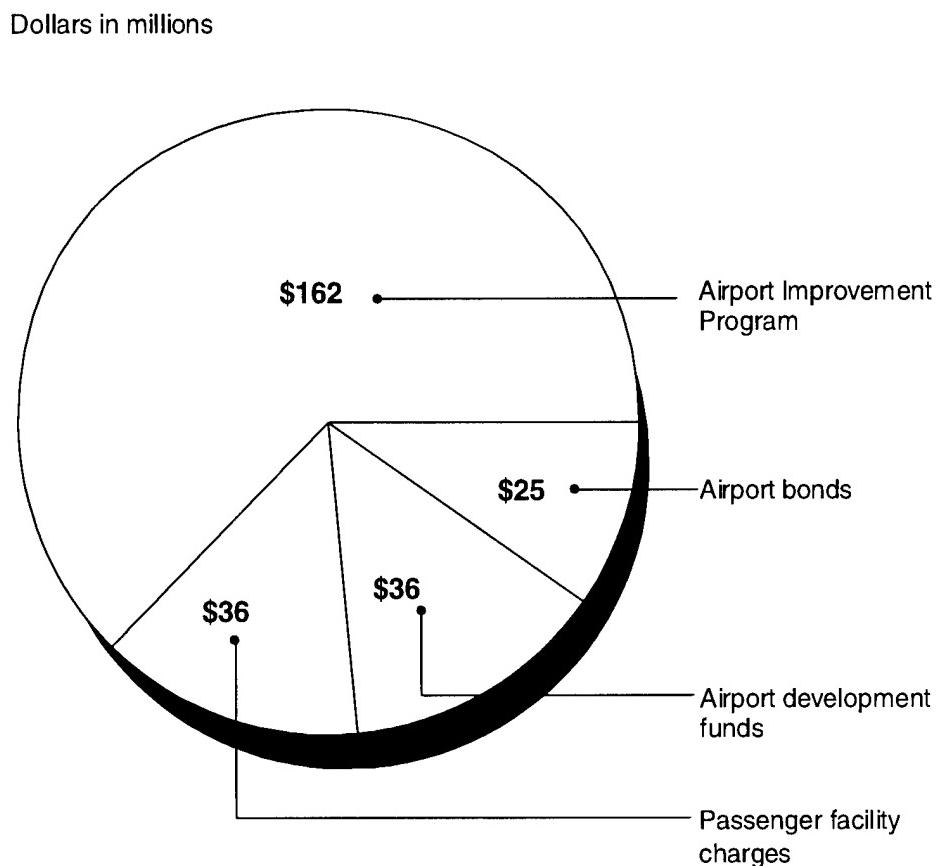
Since 1975, Seattle-Tacoma International Airport has expended about \$260 million acquiring 1,431 homes and parcels of land and insulating 6,840 homes. Airport officials estimate that within the next 4 years, approximately 200 additional homeowners will apply for insulation at a cost of approximately \$5 million to mitigate the effects of noise generated by air traffic using the airport's third runway (which is due to be completed in 2001).

Seattle-Tacoma International Airport has used several sources of funding to finance its \$260 million in noise mitigation projects, including AIP grants, passenger facility charges (PFC),⁴ the airport's own development fund,⁵ and airport bonds. The AIP funds were by far the largest contributor to noise mitigation projects, as shown in figure 1.

⁴49 U.S.C. section 40117.

⁵Airport development funds are funds accumulated from airport revenue for airport operating expenses, including small capital projects.

Figure 1: Sources of Funds for Noise Mitigation Projects for Seattle-Tacoma International Airport, 1975-98



Note: PFCs were only available to airport owners after 1991.

Seattle-Tacoma International Airport's noise mitigation program update is one of many provisions of a controversial plan to expand the airport's capacity by adding a third runway. Local communities and citizen groups are opposed to this expansion and have expressed concerns about the new runway and the noise mitigation program. Several of these communities have joined together to pursue legal actions against the airport's new runway development (footnote 7 includes additional information).

Statutory and Regulatory Requirements Do Not Necessitate That Airports Obtain Written Declarations

FAA has broad discretion when determining how to comply with statutory requirements about community involvement in the development of noise mitigation plans. Federal statutes say that FAA need only be satisfied that an airport's proposed noise mitigation project is consistent with the local plans of affected agencies when determining whether to issue an AIP grant. While FAA has a policy calling for airport owners to obtain written declarations of consistency with local plans and local support from affected communities, neither federal law nor FAA regulations require such written declarations.

The legislative history shows that the Congress intended that the Secretary of Transportation be given wide latitude in enforcing the provision in the statutes. There is no evidence in the legislative history that indicates FAA has to obtain written declarations from local agencies. In some other instances, the Congress did specify that FAA had to obtain written assurances from the grant applicant.⁶ For example, FAA must receive a written assurance that an airport will be available for public use under reasonable conditions and without unjust discrimination. However, noise mitigation plans were not included in these requirements.

FAA officials said they meet the statutory requirement that airports' proposed noise mitigation projects are consistent with local plans during the process used to develop any airport's noise compatibility plan—a process that must be completed before an airport receives AIP grants for noise mitigation projects. All airport noise compatibility plans must contain an examination of noise issues and a series of maps that depict noise levels and areas affected by noise. Airports' noise compatibility plans may identify residences and public buildings most affected by aircraft noise and contain proposals to mitigate the effects of the noise. As part of the process, airports are required to provide opportunities for public participation. FAA officials said that the public participation component of the process provides affected agencies with the opportunity to state whether the program is consistent with local plans and has the local support of their communities.

This approach appears to be consistent throughout FAA. We contacted FAA officials in each of FAA's nine regions to determine whether any region enforced the grant assurance directing airports to obtain written declarations of consistency with local plans and local support. In all cases, the FAA officials said that they did not require airport owners to obtain written declarations but instead assured themselves through other ways

⁶49 U.S.C. section 47107.

that the project was consistent with local plans and had local support. Specifically, they indicated that public participation during the development of noise compatibility plans was adequate demonstration that a project was consistent with local plans and had local support.

In the case of Seattle-Tacoma International Airport, FAA approved the noise compatibility program in 1985 and again in 1994. FAA officials said that they were satisfied that the airport's proposed noise mitigation projects were consistent with local agencies' plans and did not require the airport to obtain written declarations of support. FAA officials from the Northwest Mountain Region Airports Division indicated that the airport satisfied itself that the projects were consistent with local plans and had local support by making significant efforts to involve citizens and officials from the affected cities in the development of the airport's plans.⁷ FAA officials said that it was their belief that the airport went beyond what was required in its attempts to involve the community in the development of various noise compatibility plans. The airport's efforts to develop the 1993 plan included steps such as the following:

- forming a technical review committee comprising local area citizens and Port of Seattle staff (this committee was convened several times throughout the development of the noise compatibility plan for consultative purposes);
- holding several public meetings to allow other concerned citizens the opportunity to participate;
- responding to written concerns received from individuals and various groups; and
- providing draft copies of the final program to the mayors or elected representatives of all affected jurisdictions and soliciting comments from these elected officials.

Conclusions

Federal statutes require FAA to satisfy itself that a noise mitigation project is consistent with local plans and has local support. It is within FAA's discretion to decide whether written declarations of consistency with local plans and local support must be obtained or whether consistency can be shown in other ways. The fact that FAA does not require these written declarations raises questions about why the requirement continues to be part of its grant instructions and procedures for noise mitigation projects.

⁷FAA's decision on this issue was upheld by the U.S. Court of Appeals for the Ninth Circuit. The court held that "the administrative record indicates that every effort was made to ensure consistency with planning efforts of local communities." City of Normandy Park et al. v. Federal Aviation Administration, No. 97-70953, 1998 U.S. App. Lexis 30463 (9th Cir. Nov. 24, 1998).

Recommendation

To avert expectations of additional consultation between an airport owner and the communities affected by airport noise, we recommend that the Secretary of Transportation direct the Administrator, Federal Aviation Administration, to determine whether the agency should require written declarations that a project is consistent with local plans and has local support from affected communities as called for by its current grant requirements. If the agency chooses not to require written declarations, we recommend that this requirement be removed from the grant assurances.

Agency Comments

We provided copies of a draft of this report to FAA for review and comment. We discussed the report with FAA officials, including the Manager, Airports Financial Assistance Division, and the Manager, Program Guidance Branch. FAA generally agreed with the report's findings, conclusions, and recommendation. With regard to the recommendation, FAA said it has initiated actions to revise the grant assurance calling for airport owners to obtain written declarations that a project is consistent with local plans and has local support from affected agencies. FAA also provided some technical comments, which we incorporated into the report as appropriate.

Scope and Methodology

To determine whether FAA must enforce the grant assurance directing airport owners to obtain written declarations of support, we reviewed pertinent statutes, regulations, and FAA policies and procedures for administering the Airport Improvement Program and noise compatibility programs. We interviewed and collected documents from FAA headquarters officials from the Office of Airport Planning and Programming and agency officials from all nine regional airport divisions. We also interviewed officials from the Seattle-Tacoma International Airport responsible for administering the noise compatibility program and reviewed pertinent documents and financial records. In addition, we interviewed officials and obtained documents from the following affected jurisdictions: King County; the cities of Burien, Des Moines, Federal Way, Kent, Normandy Park, SeaTac, and Tukwila; and the Highline School District.

We also interviewed a private citizen from the Southwest King County Group (a citizens committee concerned about airport noise) and a representative from a Washington State legislator's office. We examined numerous documents pertaining to Seattle-Tacoma's noise compatibility program, including three Part 150 studies/updates; correspondence between the airport, affected jurisdictions, community members, and FAA;

and grant awards and program audits and evaluations from independent auditors and the Washington State Auditor.

We performed our review from August through December 1998 in accordance with generally accepted government auditing standards. All dollar amounts in this report are nominal amounts.

As agreed with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 14 days after the date of this letter. At that time, we will send copies to the Secretary of Transportation; the Administrator, FAA; the Director, Office of Management and Budget; and other interested parties. We will also make copies available to others on request.

Major contributors to this report included Dana Greenberg, David Hooper, David Robinson, and Randy Williamson. If you have questions regarding this report, please contact my office at (202) 512-2834.

Sincerely yours,



John H. Anderson, Jr.
Director, Transportation Issues

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